IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

THURSDAY, THE 15TH FEBRUARY 2007 / 26TH MAGHA 1928

Crl.L.P..No. 86 of 2007()

ST.1236/2005 of JUDICDIAL FIRST CLASS MAGISTRATE'S COURT I, KOTTAYAM

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PETITIONER/COMPLAINANT:

MATHEW K. CHERIYAN,
KOSAMATTOM HOUSE, MANGANAM, KOTTAYAM.

BY ADV. SRI.R.RAMADAS

RESPONDENTS: ACCUSED AND STATE:

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1. SAJEEV ABRAHAM, S/O.KITTAN ABRAHAM,
CLEAMES STUDIO, NEAR BEST HOTEL, KOTTAYAM.

2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.M.J.THOMAS-R1
PUBLIC PROSECUTOR SRI. S. DILEEP -R2

THIS CRIMINAL LEAVE PETITION HAVING COME UP FOR ADMISSION ON 15/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.THANKAPPAN, J.

CRL. L.P. NO. 86 OF 2007

Dated this the 15th day of February, 2007

O R D E R

This petition for leave to appeal is filed against the judgment in S.T. No.1236 of 2005 on the file of the Judicial First Class Magistrate's Court - I, Kottayam.

2. The case of the appellant - complainant was that the first respondent borrowed a sum of Rs.1,10,000/- from him and issued Ext.P1cheque towards discharge of the said liability which when presented to the bank for encashment was dishonoured for want of sufficient funds in the account of the first respondent. After complying with the statutory formalities, the appellant filed the complaint. To prove the case against the first respondent, the power of attorney holder of the appellant was examined as PW.1 and Exts.P1 to P8 were produced. On the side of the defence, the first respondent himself was examined as DW.1 and Ext.D1 was produced. After closing the prosecution evidence, the first respondent was questioned under Section 313 Cr. P.C. He stated that he had no transaction with the appellant other than a chitty which he had already bid

and had issued three blank cheques to the appellant at that time and that even after the chitty was closed, the cheques were not returned to him. The first respondent further stated that one of the cheques issued by him to the appellant was misused by the appellant. Even PW.1 had not stated of any other transaction except the chitty. In the above circumstances, the trial court found that the appellant failed to prove any case against the first respondent under Section 138 of the Negotiable Instruments Act, 1881. After hearing the learned counsel for the appellant and going through the impugned judgment, this Court is of the view that the findings entered by the court below require no interference.

The Crl. Leave Petition is accordingly dismissed.

(K.THANKAPPAN, JUDGE)

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